



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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NOV 14 2008

RE: MUR 5943  
Californians for Equal Representation

Dear Mr. Hildreth:

On October 9, 2007, the Federal Election Commission notified your client, Californians for Equal Representation, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On October 22, 2008, the Commission found, on the basis of the information in the complaint and information provided in response to the complaint, that there is no reason to believe Californians for Equal Representation violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Shana Broussard, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENT:** Californians for Equal Representation

MUR: 5943

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6 **I. INTRODUCTION**

7 This matter is based upon a complaint alleging that Presidential candidate Rudolph W.  
8 "Rudy" Giuliani and the Rudy Giuliani Presidential Committee, Inc., and John H. Gross, in his  
9 official capacity as treasurer ("Giuliani Committee"), violated the Federal Election Campaign  
10 Act of 1971, as amended ("the Act") by establishing, financing, maintaining and controlling a  
11 newly-created Missouri limited liability corporation, Take Initiative America, LLC ("TIA"), for  
12 the purpose of soliciting and receiving contributions in excess of federal limits to support a ballot  
13 initiative measure in California. Specifically, the complaint alleges that the Giuliani Committee,  
14 through its alleged agent, Paul Singer, solicited or directed contributions to TIA in excess of the  
15 federal limits in violation of 2 U.S.C. § 441a; solicited or directed contributions to TIA from  
16 impermissible sources such as corporations or foreign entities in violation of 2 U.S.C. §§ 441b  
17 and 441e; and coordinated with a California state political committee, Californians for Equal  
18 Representation ("CER"), resulting in an excessive in-kind contribution to the Giuliani campaign  
19 in violation of 2 U.S.C. § 441a.

20 **II. FACTUAL BACKGROUND**

21 On July 17, 2007, California resident Thomas Hiltachk submitted a ballot measure  
22 entitled the "Presidential Election Reform Act" to the Attorney General of California to begin the

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process of qualifying the measure for the June 2008 Primary ballot.<sup>1</sup> The ballot measure sought to change the way the State of California allocates its presidential electors by apportioning electors according to the popular vote winner in each congressional district rather than the current statewide winner-take-all system. According to media reports, if the measure qualified for the June 2008 ballot and was approved by a majority of voters in the state, it would have gone into effect for the November 2008 general election, where it was expected to allocate a portion of California's fifty-five electoral votes. *See* Bill Schneider, *Republicans Want a Share of California Electoral Votes*, www.cnn.com, August 9, 2007; Carla Marinucci, *GOP-backed bid to reform state's electoral process folding*, SAN FRANCISCO CHRONICLE, Sept. 28, 2007.

On August 1, 2007, Hiltachk filed a statement of organization with the California Fair Political Practices Commission registering a state political committee, "Californians for Equal Representation" ("CER"), as a committee primarily formed to support the Presidential Election Reform Act. Available information indicates that in addition to Thomas Hiltachk, other CER organizers included Charles Bell, a partner in Hiltachk's law firm, Kevin Eckery, a Republican consultant, and Marty Wilson, a campaign strategist for Sen. John McCain's presidential committee. Between August 1 and September 10, 2007, CER reported receiving contributions totaling \$1,200 from three separate contributors. Then, on September 11, 2007, CER received a \$175,000 contribution that reportedly came from "TIA Take Initiative America, LLC" ("TIA").

According to its website, TIA is a not-for-profit organization engaged in promoting lower taxation and regulation on American jobs and taxpayers, defending employee paychecks from politics, reforming legal and educational systems, and ensuring greater voter participation. *See*

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<sup>1</sup> To qualify the measure for the June 2008 ballot, supporters of the initiative needed to collect 434,000 signatures of registered California voters by November 13, 2007. Dan Morain, *GOP eyes California's electoral pie*, LOS ANGELES TIMES, August 6, 2007, at B-2.

1 <http://www.takeinitiativeamerica.org/inner.asp?z=1>. The group, which incorporated in the State  
2 of Missouri on September 10, 2007, has applied for recognition as a tax exempt organization  
3 under section 501(c)(4) of the Internal Revenue Code. According to the group's website, TIA  
4 supports three projects, one of which is Californians for Equal Representation.<sup>2</sup> The TIA website  
5 does not contain any information about the group's leaders, supporters, or funders and does not  
6 mention any Federal candidates. However, incorporation documents filed with the State of  
7 Missouri identify Charles Hurth of Union, Missouri as the corporation's organizer and registered  
8 agent. TIA's tax exemption application form, also filed by Charles Hurth, lists Hurth as the sole  
9 director and officer, and with respect to the organization's funding, states that:

10 Take Initiative America is funded exclusively through gifts and contributions  
11 from its supporters. These supporters include both individuals and corporate  
12 entities that support Take Initiative America goals. Although Take Initiative  
13 America is a membership organization, its members are not currently required to  
14 pay a set amount of dues.

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16 The group's website does not contain any further information. One day after incorporating, TIA  
17 made the \$175,000 contribution to CER.

18 Shortly after CER received the contribution from TIA, the media began questioning the  
19 source of TIA's funds and whether TIA and CER were connected to the Giuliani campaign. The  
20 Giuliani campaign denied any involvement with the ballot initiative, stating "[w]e are absolutely  
21 not involved in that effort" and there is "no coordination between the Giuliani campaign and any  
22 statewide effort." Carla Marinucci, *Mystery man's key role in move to change Electoral College*  
23 *rules*, SAN FRANCISCO CHRONICLE, Sept. 27, 2007, at A-1. A Giuliani spokesman further stated  
24 that "[t]his is completely independent from our campaign, and frankly, it's not an initiative that

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<sup>2</sup> The other two projects include an effort called "First Class Education" and an initiative entitled "Protecting Employees' Paychecks from Politics."

1 serves our campaign's best interests." Carla Marinucci, *Giuliani backer was funder of state*  
2 *electoral initiative*, SAN FRANCISCO CHRONICLE, September 29, 2007.

3 When TIA refused to divulge the source of its funding, CER's main organizers –  
4 Hiltachk, Eckery and Wilson – resigned and dissolved CER. Marinucci, *GOP-backed bid to*  
5 *reform state's electoral process folding*. Upon announcing his resignation from the group on  
6 September 28, 2007, Hiltachk called upon TIA to divulge the source of its funding, and  
7 expressed dismay at TIA's failure to inform CER that it had been formed one day prior to making  
8 the contribution. Eckery told the media: "There's no reason to be cute on campaign  
9 contributions. We had nothing to hide and the public has every right to know." Dan Morain,  
10 *GOP electoral initiative dealt major blows*, LOS ANGELES TIMES, September 28, 2007. CER,  
11 which officially terminated on October 12, 2007, reported total contributions of \$198,172.80,  
12 including the \$175,000 contribution from TIA.<sup>3</sup> CER apparently used the funds to pay costs  
13 associated with gathering signatures and did not refund most of the contributions after the group  
14 folded.<sup>4</sup> See Morain, *GOP electoral initiative dealt major blows*.

15 The day after CER's officers and key members resigned, hedge fund executive Paul  
16 Singer came forward as the source of TIA's \$175,000 contribution to CER. Singer, who was  
17 characterized by the media as a "Giuliani policy advisor" and "Giuliani's top fundraiser" issued a  
18 statement contending that he contributed to TIA because he believes in proportional voting in the  
19 Electoral College and denied that his contribution was connected to the Giuliani campaign.  
20 Carla Marinucci, *Giuliani backer was funder of state electoral initiative*.

<sup>3</sup> The group also reported receiving a \$28,000 in-kind contribution from a Sacramento public relations firm.

<sup>4</sup> CER's state disclosure reports indicate that it did actually refund \$6,482.20 to TIA on October 12, 2007, the day CER terminated.

At the end of October 2007, the media reported that another group of individuals, including former Giuliani campaign fundraiser Anne Dunsmore, attempted to revive the ballot initiative effort by forming a group called California Counts. Steven Harmon, *Dems see plot in electoral vote plan*, MEDIA NEWSGROUP, October 29, 2007. Singer denied any involvement with the revived initiative effort. *Id.* Ultimately, neither committee gathered sufficient signatures to qualify the initiative for the June 2008 ballot.

The complaint contends that the Giuliani campaign may have coordinated with CER. This allegation is based on press accounts that supposedly quote a fundraiser for CER as stating that he heard 'the Giuliani people were interested in funding the campaign.' *Id.* Thus, according to the complaint, expenditures by CER may have resulted in excessive in-kind contributions to the Giuliani campaign.

The response from CER denies that the group coordinated with the Giuliani campaign and asserts that the articles cited in the complaint to support the coordination allegation actually demonstrate that CER did not know who TIA's funders were when CER received the \$175,000 contribution from TIA, despite CER's diligent efforts to ascertain that information. As such, CER claims that it could not have coordinated with the Giuliani campaign through TIA because it had no knowledge as to whether TIA had any ties to the Giuliani campaign or any of its agents. Although not specifically alleged in the complaint, the response also denies that CER communicated directly with the Giuliani campaign or any of its agents.

### **III. LEGAL ANALYSIS**

Under the Commission's regulations, any expenditures that are made in cooperation, consultation or in concert with, or at the request or suggestion of a candidate or a candidate's authorized committee, but that are not coordinated communications, party coordinated

1 communications, or coordinated party expenditures, are in-kind contributions to the candidate  
2 and must be reported as an expenditure by that candidate. 11 C.F.R. § 109.20(b).

3 The complaint bases its coordination allegation entirely on press accounts that supposedly  
4 quote a fundraiser for CER as stating that he heard 'the Giuliani people were interested in  
5 funding the campaign.' The Giuliani Committee expressly denies that it coordinated with CER  
6 and includes a sworn affidavit from a Giuliani Committee staffer who substantiates the  
7 Committee's position. Similarly, CER also denies in its response that it coordinated in any way  
8 with the Giuliani Committee and asserts that it did not even know that someone who had a  
9 connection to Giuliani was the source of TIA's funds. The coordination allegation contained in  
10 the complaint appears to be sufficiently refuted by the Giuliani Committee and CER. As the  
11 Commission has previously stated, unwarranted legal conclusions from asserted facts, or mere  
12 speculation, will not be accepted as true, and "[s]uch speculative charges, especially when  
13 accompanied by direct refutation, do not form an adequate basis to find reason to believe that a  
14 violation of FECA has occurred." Statement of Reasons in MUR 4960 (Hillary Rodham Clinton  
15 for U.S. Senate Exploratory Committee, issued Dec. 21, 2000) (citations omitted).

16 Therefore, there is no reason to believe that Californians for Equal Representation  
17 violated the Act in connection with the allegations contained in the complaint in this matter.

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